

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Altice USA, Inc.)	
Cablevision Systems Corporation, and)	
CSC Holdings, LLC)	
)	MB Docket No. 18-9
Petition for Declaratory Ruling,)	
Enforcement Order, and Further Relief)	

OPPOSITION OF ALTICE USA, INC.

Tara M. Corvo
Seth A. Davidson
Ari Z. Moskowitz
Elana R. Safner
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

Jay Cohen
George W. Kroup
Paul, Weiss, Rifkind, Wharton &
Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
(212) 373-3000

February 5, 2018

TABLE OF CONTENTS

INTRODUCTION AND SUMMARY	1
FACTUAL BACKGROUND	4
ARGUMENT	12
I. ALTICE DID NOT VIOLATE THE COMMISSION’S SUBSCRIBER NOTIFICATION AND TELEPHONE AVAILABILITY STANDARDS	12
A. Altice Fully Complied With The Commission’s Subscriber Notice Requirements	12
B. The Notice Requirements Of Section 76.1603(c) Are Inapplicable Here	19
C. Starz Has Failed To Demonstrate A Violation Of The Telephone Answering Standards	21
II. ALTICE’S CESSATION OF CARRIAGE OF THE STARZ NETWORKS ON JANUARY 1, 2018 DOES NOT WARRANT THE ENFORCEMENT ORDER OR FURTHER RELIEF REQUESTED BY STARZ.....	23
A. Starz Has No Standing To Seek Relief Under The Customer Service Rules	23
B. Complaints Alleging Violations Of The Customer Service Rules Are Properly Brought Before Local Franchising Authorities, Not The Commission	24
C. An “Enforcement Order” Directing Altice To Reinstate Carriage Of The Starz Networks Would Serve No Valid Purpose, Would Be Confusing To Consumers, And Would Be Harmful To Altice And The Programmers It Added As Replacements To The Starz Networks.....	26
D. This Is An Appropriate Case For The Commission To Exercise Its Discretion Not To Impose Any Liability On Altice For Alleged Violations Of The Customer Service Rules	29
CONCLUSION.....	30

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Altice USA, Inc.)	
Cablevision Systems Corporation, and)	
CSC Holdings, LLC)	
)	MB Docket No. 18-9
Petition for Declaratory Ruling,)	
Enforcement Order, and Further Relief)	

OPPOSITION OF ALTICE USA, INC.

Altice USA, Inc., Cablevision Systems Corporation, and CSC Holdings, LLC
(collectively, “Altice”)^{1/} respectfully submits this Opposition to the Petition for Declaratory
Ruling, Enforcement Order, and Further Relief (“Petition”) filed by Starz Entertainment, LLC
 (“Starz”).

INTRODUCTION AND SUMMARY

The Commission should deny Starz’s Petition, as there has plainly been no violation of
the Commission’s rules. Rather, the Petition is nothing more than a thinly veiled attempt to
misuse the regulatory process to achieve carriage that could not be secured at the bargaining
table.

There are *five* principal reasons why the Petition should be denied:

First, Starz’s Petition is based on a fundamentally flawed argument that Altice had
“control” over future carriage of Starz as of December 1, 2017, a month before the parties’
carriage agreements expired on December 31. But the record shows that for more than three

^{1/} The Petition asserts, without any supporting evidence, that Starz “also believes that Cequel did
not provide the required 30-day notice to subscribers and has not properly responded to customer
inquiries and complaints.” Petition at 3 n.1. The Commission should dismiss the Petition with regard to
Altice’s Cequel (Suddenlink) systems for lack of evidence, but for completeness, this Opposition
responds on behalf of both Cablevision and Cequel.

months, beginning in September 2017, Altice and Starz had been engaged in active negotiations to replace or extend their existing agreements. Indeed, Altice made more than a half dozen offers of carriage in good faith during this period and continued to work toward a deal right through Sunday, December 31, 2017, when its existing carriage agreements expired. After the parties reached a final impasse on December 31, Altice had no legal right to carry the Starz networks^{2/} and discontinued carriage, a result that could have been avoided had Starz accepted any of the good faith offers made by Altice.

Viewed against this negotiating history, Starz's contention that Altice should have given its customers notice that it intended to drop Starz simply makes no sense: on December 1, 2017, Altice did not intend to drop Starz. The position Starz advances is utterly divorced from industry practice; programmers commonly seek to exert maximum leverage by negotiating up to the eve of the date on which their networks will be out of contract and have to be dropped, and as a result, deals are frequently struck on the eve of expiration of prior carriage agreements. No rational cable operator would have concluded on December 1 that Altice's Starz agreement would not be renewed and Altice certainly reached no such conclusion.

Second, the Petition should be denied because it rests on the false premise that Starz offered Altice a 30-day extension on the same terms as the existing agreements that would have allowed Altice to give notice prior to dropping the network. Starz *never* made such an offer. To the contrary, Starz offered a few days' extension that would not have opened a window for Altice to give its customers the 30 days' notice Starz wrongly contends was required in this case. Altice was the only party that proposed an extension that would have ensured carriage for at least

^{2/} "Starz networks" refers to all Starz networks previously carried by Altice, including Starz, Starz/Encore, and MoviePlex channels.

30 days past the December 31 expiration of the prior agreements, a proposal that Starz summarily rejected.

Third, the Petition ignores the fact that the purpose of the Commission's customer service rules is to protect customers, not to regulate the business relationship between cable operators and cable programmers. As a result, Starz has no standing to invoke the customer service rules for its own benefit. The Commission has long taken the position that it has no role to play in marketplace negotiations between program networks and cable operators or the enforcement of customer service rules. Granting the relief that Starz purportedly seeks on behalf of consumers would only create disruption and confusion for Altice subscribers. As of today – February 5, 2018 – Altice subscribers have already had well over 30 days' notice that Starz has been removed from Altice systems, have begun enjoying the new channels that have been added to the systems, and for those that wish to, have made alternative arrangements to access Starz content. An order temporarily reinstating carriage for a limited, 30-day period would provide no real benefit for the consumers Starz allegedly wishes to protect; to the contrary, it would fuel consumer confusion by adding Starz to the channel line-up for 30 days, causing further changes to Altice's lineup due to bandwidth constraints, followed by yet another change when Altice once again drops Starz programming.

Fourth, the Petition ignores the fact that Altice complied with Commission rules by providing notice of the service changes to its customers "as soon as possible" after it lost the right to carry Starz programming – a change in service that was not "within the control" of Altice. It did so by engaging in an extensive customer outreach campaign designed to educate those customers wanting to retain Starz of the many alternative ways they could immediately obtain access to the programming, as well as mitigating any potential consumer harm. For those

customers who specifically bought Starz networks as premium channels, Altice automatically prorated their bills, and for customers who received Starz programming as part of a package and requested service changes due to the loss of Starz, Altice allowed them to make penalty-free changes in their tiers of programming and adjusted their bills accordingly. Starz, by contrast, engaged in an extensive and untruthful outreach campaign designed to mislead and confuse Altice's customers and disrupt Altice's business operations. In these circumstances, there is no violation of the notice rules.

Fifth, Starz cannot cure the infirmities of the Petition by citing customer "complaints" about Altice. The Commission has seen this type of programmer-initiated campaign before and rightly concluded that complaints lodged as a result are entitled to little, if any, weight. That conclusion applies with particular force here, as the Starz media campaign is filled with misrepresentations that Altice refused to continue to carry the network and that Starz's content is not available to those same subscribers through many other means, including Starz itself. In truth, the reason why Altice no longer offers Starz programming to its customers is the failure of Starz to accept a commercially reasonable long-term deal or extension.

For these reasons, as well as those set forth below, the Petition should be denied.

FACTUAL BACKGROUND

The Negotiations Between Altice and Starz

Prior to January 1, 2018, Altice carried Starz networks pursuant to agreements that were entered into on December 20, 2012 and December 29, 2012, each with a scheduled expiration date of December 31, 2017.^{3/} In March 2017, at an in-person meeting, Altice recommended to Starz that, to get an early start on a new or extended agreement, Starz should submit a proposal

^{3/} Declaration of Michael Schreiber, Executive Vice President, Chief Content Officer, Altice USA, Inc., ¶ 2, attached hereto as Attachment A ("Schreiber Decl.").

to Altice. Despite in-person meetings in Altice’s New York City offices on May 24, 2017 and July 11, 2017, at which it would have been customary for a programmer to make carriage proposals to Altice, Starz did not offer its first proposal until September 20, 2017, seemingly trying to get closer to the expiration to pressure Altice into accepting unrealistic demands.^{4/}

Altice expressed immediate concern about various aspects of Starz’s September 20 proposal, and remained in contact with Starz about the proposal over the next two months, including a November 8 telephone call in which Altice provided Starz with detailed feedback.^{5/} Nevertheless, Altice expected to reach an agreement with Starz. It had successfully negotiated agreements with Starz in the past – and numerous similar premium networks and over-the-top (“OTT” or “direct to consumer”) partners – and had no reason to think that it would not do so again.^{6/} Indeed, assuming that its relationship with Starz would continue beyond December 31, Altice expanded Starz’s existing carriage in November 2017 by adding Starz to Altice’s new Optimum Premier Package – Altice would not have taken this step if it had already decided to cease carrying Starz at the end of December.^{7/}

Altice presented a formal counter-proposal to Starz on November 28, to which Starz did not respond until December 4.^{8/} Thus, on December 1, 2017, Altice had presented terms on which it was willing to carry Starz, and the decision whether or not to accept terms was squarely with Starz. When Starz responded on December 4, it rejected Altice’s counter-proposal, and presented a new proposal for Altice’s consideration. Negotiations continued over the next three and a half weeks, accelerating as the December 31, 2017 deadline approached. During this

^{4/} *Id.*, ¶ 3.

^{5/} *Id.*, ¶ 4.

^{6/} *Id.*, ¶ 5.

^{7/} *Id.*, ¶ 6.

^{8/} *Id.*, ¶ 7.

period, the parties met repeatedly by phone and in-person, exchanging and discussing more than a dozen different carriage proposals.^{9/}

The parties' core disagreements were, not surprisingly, about the value of the Starz programming and whether it was acceptable to force Altice customers to subsidize its cost even if they did not want or watch the product. In considering Starz's proposals, Altice weighed the fact that customers who were most interested in the Starz networks can purchase such content directly from Starz.^{10/} With these concerns in mind, Altice presented a variety of proposals, including an offer to carry the Starz networks on a solely *a la carte* basis, an offer to extend either of the existing Cablevision or Suddenlink agreements, and an offer to resell Starz's direct-to-consumer service to Altice's customers.^{11/} In each proposal, Altice sought to find common ground with Starz—in some cases, by agreeing to Starz's proposed payment structure, in others, by moving closer to Starz's desired pricing, and in still others, by changing the duration of the deal. Starz rejected every one of these proposals.^{12/}

During these December discussions, Starz raised the possibility of a short-term extension, under which Altice would continue to carry the Starz networks for a few days past December 31, to "get past the holidays."^{13/} Altice responded that it would do so, but would pay fees retroactively to January 1 only once a longer-term agreement was reached.^{14/} While Starz has characterized this as a demand for "free carriage," Altice's motivation was to ensure that the

^{9/} *Id.*

^{10/} *Id.*, ¶ 8.

^{11/} *Id.*, ¶ 9.

^{12/} *Id.*

^{13/} *Id.*, ¶ 10.

^{14/} *Id.*

parties continued to work towards a multi-year carriage agreement.^{15/} Starz rejected this approach, offering only to extend the agreements for a few days on the expiring agreements' terms – an offer that Altice believed was unlikely to incentivize the parties to reach a long-term agreement.^{16/}

At no point during these discussions did Starz propose any extension of 30 days or longer based on the expiring agreements.^{17/} Altice was the only party that made such an offer, suggesting repeatedly that the parties enter into a one-year or two-year extension on the terms of the expiring agreements. Starz rejected this offer.^{18/}

Both parties clearly understood that if an agreement could not be reached by the time the existing agreements expired, Altice, having no legal right to carry the Starz networks, would remove them from its cable systems' line-ups. Altice explicitly so advised Starz, and offered to resell Starz's OTT product to help Altice's subscribers' transition to the OTT product in the event carriage was discontinued.^{19/} Altice subscribers are highly familiar with OTT offerings – Altice estimates that about 70% of them subscribe to Netflix, Hulu, Amazon, or other OTT offerings – making Starz's OTT product a viable alternative for the vast majority of viewers. Starz declined this offer, too.^{20/}

Significantly, during the entire time Altice and Starz were engaged in negotiations, Starz never suggested that Altice should begin notifying its customers in advance of the possible deletion of the Starz networks – the supposed lack of which is the primary basis for the relief it

^{15/} *Id.*, ¶ 10.

^{16/} *Id.*

^{17/} *Id.*, ¶ 11.

^{18/} *Id.*

^{19/} *Id.*, ¶ 12.

^{20/} *Id.*

now seeks from the Bureau.^{21/} Altice had no reason to do so with regard to any of the more than 30 content providers with whom it had carriage agreements expiring on December 31, because it reasonably expected that those agreements would be renewed. And in fact, renewal agreements were reached with every single such content provider except Starz.^{22/} Giving subscribers notice that there was the potential for losing over 30 content providers from their service would have misled and confused subscribers. Altice did give subscribers notice of several programming changes that it knew with certainty were being implemented.^{23/}

On Sunday, December 31, 2017, the parties held two in-person meetings, one in the morning and one in the afternoon. Ultimately, the parties could not agree on terms and Starz made no extension offer.^{24/} The second meeting ended with the parties shaking hands and agreeing that both sides had tried to reach a deal. Starz thanked Altice for its “professionalism” during the negotiating process.^{25/} At midnight, with no agreement or extension in hand and no new communications taking place between the parties, Altice’s management concluded that with no legal basis for continuing to carry the Starz networks, it had to remove them from Altice’s systems and so instructed its operations team.^{26/}

Altice and Starz have continued negotiations since December 31 in an effort to strike a new carriage deal.

Other Programming Changes

After Altice removed the Starz networks from its systems, many subscribers began

^{21/} *Id.*, ¶ 13.

^{22/} *Id.*

^{23/} *Id.*

^{24/} *Id.*, ¶ 14.

^{25/} *Id.*

^{26/} *Id.*

receiving HBO or Showtime at a discount, or TMC at no additional charge for 12 months. Altice also added various other networks to its channel line-ups in the exercise of good faith business judgment to create a programming line-up that reflects the best value for Altice's customers. Altice had negotiated contingency carriage agreements with several of these channels in case negotiations with Starz fell through, a common practice in contentious carriage negotiations.^{27/} Those networks include Hallmark Drama Channel, MGM HD Channel, The Sony Movie Channel, and others, as well as expanded distribution of FLIX. (The exact menu of replacement service varied by system and programming package).^{28/} Given that different channels require different amounts of bandwidth, taking advantage of cable channel mapping capability, Altice assigned these replacement service channel numbers that are different than the channels the Starz channels had occupied.^{29/}

Altice systems are extremely bandwidth constrained. The addition of these new channels has fully occupied any available capacity. As a result, if Altice were ordered to reinstate carriage of the Starz networks, it would be forced to make difficult choices among (i) deleting channels to avoid breaching launch obligations scheduled in 2018; (ii) down-converting one of its newly launched channels currently carried in HD to SD; (iii) canceling the highly-anticipated launch of a 4K channel that would be distributing 4K content for the 2018 Winter Olympics (scheduled for this week); or (iv) deleting thousands of Video-On-Demand (VOD) assets (including all of its VOD assets for the 2018 Winter Olympics), to the extent Altice needs to restore Starz VOD content.^{30/}

^{27/} *Id.*, ¶ 16.

^{28/} *Id.*

^{29/} *Id.*, ¶ 17.

^{30/} *Id.*, ¶ 18.

Notification of Programming Changes

Immediately prior to the removal of the Starz network feeds from Altice's systems and the addition of the substitute channels (*i.e.*, at 12:00 AM on January 1, 2018), Altice began notifying its customers of the changes in their channel line-ups. Altice posted an on-screen message on channels previously occupied by Starz informing customers that the programming would no longer be available on Altice's channel line-ups and advising customers to visit a dedicated website page (optimum.net/starz) for additional information. The website and notices offered information about the changes in the channel line-ups, and also notified customers that "[i]f you wish to continue to watch Starz and StarzEncore, you can purchase it directly through Starz at www.starz.com or via their Android/IOS app" and that Hulu (available to many Altice customers directly via their HD cable boxes) also offers past seasons of many Starz shows.^{31/}

In addition to the onscreen slate and dedicated website, Altice sent targeted (by programming package) email blasts to its customers and included information about the service change in customers' next billing statement. It also provided its customer service representatives with detailed scripts and talking points for responding to consumer inquiries about the service change and activated IVR messaging capability to provide recorded information to callers and help direct their calls. Through these communications or in response to subscriber inquiries, Altice informed customers that if they elected to downgrade or disconnect service within 30 days, they would not be charged any downgrade or disconnect fee, and that if they had pre-paid their services, they would be entitled to a refund if they chose to disconnect. Subscribers who were billed for Starz *a la carte* for the month of January were informed that they would receive a

^{31/} *Id.*, ¶ 19.

bill credit on the next month's billing statement.^{32/}

Customer Service Telephone Responsiveness

Once the Starz channels were removed from the Altice systems, Starz immediately launched an intense campaign to confuse consumers and disrupt Altice's customer service.^{33/} Indeed, it is clear that just as Altice negotiated contingent carriage arrangements, as is standard in contentious negotiations, Starz prepared to roll out this campaign even while negotiations were ongoing. To the extent some subscribers may have encountered delays in connecting to Altice or reaching a customer service representative immediately following the service changes, it was not because Altice diverted or disconnected such calls. Altice did not do so. Rather, the major factor causing such delays was Starz's deliberate effort to generate negative publicity for Altice.

Starz's campaign was designed to encourage as many people as possible to call Altice to complain, whether or not they were Altice subscribers, or even lived within Altice's geographic footprint. Starz launched a new website – *keepstarz.com* – and ran ads in the *New York Times* and on the front page of the *New York Post*.^{34/} Starz ran numerous television ads, including during the NFL playoffs, and began a celebrity-heavy global social media campaign that reached at least twenty million Instagram followers and over ten million Twitter followers all over the world.^{35/}

Unlike Altice, which provided its customers with information about how they could

^{32/} *Id.*, ¶ 21.

^{33/} *Id.*, ¶ 22.

^{34/} *Id.*

^{35/} See Altice USA, Inc., Opposition of Altice USA, Inc. to Emergency Petition of Starz Entertainment, LLC for Injunctive Relief, MB Docket No. 18-9, at Attachment A (filed Jan. 23, 2018) (“*Opposition to Emergency Petition*”).

quickly regain access to Starz content from sources such as Hulu or Starz itself, the Starz campaign focused principally on getting customers to drop Altice in favor of another MVPD.^{36/}

ARGUMENT

I. ALTICE DID NOT VIOLATE THE COMMISSION’S SUBSCRIBER NOTIFICATION AND TELEPHONE AVAILABILITY STANDARDS

A. Altice Fully Complied With The Commission’s Subscriber Notice Requirements.

The Commission’s rules require Altice to give subscribers 30 days’ advance notice of a programming change when the change is within Altice’s “control,” and to give notice “as soon as possible” when the change is outside of Altice’s control.^{37/} Altice had no such “control” allowing it to give 30 days’ notice of the deletion of the Starz networks, because it had not concluded that it would not reach a timely carriage agreement with Starz. Under the Commission’s rules, external factors, including here, a cable operator’s need for a program network’s consent to the continued carriage of its content, are not within the control of a cable operator.^{38/} Starz nonetheless makes five arguments that Altice had “control” of the decision to make the programming change. None has any merit.

First, Starz claims that Altice’s removal of the Starz network feeds from its systems was within Altice’s control because Starz “has not de-authorized Altice from receiving its programming signals to this day.”^{39/} The fact that Starz has not employed technical measures to block Altice from continuing to carry the Starz networks post-December 31, 2017 is irrelevant in

^{36/} See Opposition to Emergency Petition, at Attachment B.

^{37/} 47 CFR § 76.1603(b). Importantly, the Commission only has jurisdiction to enforce Section 76.1603(b) when the violation is “systemic,” a standard not met here. See *infra*, Part II.B.

^{38/} See, e.g., *Time Warner Cable, Inc.*, Notice of Apparent Liability for Forfeiture and Order, DA 09-127, ¶ 5 (rel. Jan. 19, 2009) (noting that a change is not in a cable operator’s control if “external” factors require the operator to make the change).

^{39/} See Starz Entertainment, LLC, Response to Opposition of Altice USA, Inc., MB Docket No. 18-9, at 3, 10 (filed Jan. 25, 2018) (“*Starz Response to Opposition*”).

the context of its Petition. It is indisputable that the parties' carriage agreements – the legal basis for carriage of Starz's programming – expired on December 31, 2017. As the Commission is well aware, programmers such as Starz routinely contend that continued carriage of a network after expiration of the operative carriage agreements is unlawful. Nothing in the Commission's rules required – or could require – Altice to carry Starz out of contract at the risk of potential legal action and liability. Altice's decision not to risk such potential liability did not create "control" within the meaning of Section 76.1603.

Second, Starz claims that the rules required Altice to accept Starz's terms of extended carriage^{40/} so that Altice could comply with the 30 day notice requirement.^{41/} Contrary to Starz's allegation, Starz did not make Altice *any* offer to extend carriage for 30 days. Starz's only extension offer was to extend carriage "for a few days, to get past the holidays"^{42/} – an offer that, even if accepted, would have not resulted in subscribers receiving 30 days' notice. As discussed above, Altice reasonably rejected this approach. And it cannot be the intent of the Commission's notice rules to force distributors to accept programmers' carriage offers, whether reasonable or unreasonable.

Starz's decision to reject each of Altice's good faith offers for a new agreement was an external factor beyond the control of Altice. Altice submitted *multiple* separate carriage proposals and expected that a new agreement would be reached by expiration. Starz rejected each one. The full negotiating record, as opposed to the cropped version offered in Starz's Reply, demonstrates conclusively that Starz, not Altice, caused the removal of its programming

^{40/} As noted, an offer was only made the last week of December and was not, as implied by Starz, an offer to extend carriage for 30 days. Schreiber Decl., ¶ 11.

^{41/} Starz Entertainment, LLC, Emergency Petition for Injunctive Relief, MB Docket No. 18-9, at 12 (filed Jan. 17, 2018) ("*Emergency Petition*").

^{42/} Schreiber Decl., ¶ 10.

by failing to accept any of Altice’s reasonable proposals to continue carriage. In particular, on December 1, 2017, the date on which Starz claims Altice should have provided notice of its networks’ impending deletion, Altice was waiting to hear whether Starz would accept a then-pending carriage proposal.^{43/} Starz’s acceptance of that offer or any of its subsequent offers would have resulted in a new agreement. But Starz repeatedly rejected Altice’s proposals to extend carriage.

Third, Starz argues that losing carriage rights does not fall within the definition of things that are outside a cable operator’s “control” by citing to and relying on a definition of a different term from another section of the Commission’s rules. The definition Starz cites is the definition of “normal operating conditions,” and while it describes “service conditions” that are or are not in a cable operator’s control, the Commission has expressly stated that the definition is only “relevant in assessing compliance with telephone answer time, installations, service calls, and repair of service interruptions.”^{44/}

Moreover, even assuming this definition applied, it proves the opposite of what Starz claims. That definition states:

Those conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.^{45/}

The Commission explained that this is intended to include “events [that] are generally scheduled by the cable operator (*e.g.*, maintenance)” and events for which “the operator knows the schedule

^{43/} Schreiber Decl., ¶ 7.

^{44/} *Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992, Consumer Protection & Customer Service*, Report & Order, 8 FCC Rcd 2892, ¶ 41(b) (1993) (“*Customer Service Order*”).

^{45/} 47 CFR 76.309(c)(4)(ii).

reasonably well in advance of the event (*e.g.*, special promotions or pay-per-view events)” so that the cable operator may “adjust its staffing to maintain compliance with the customer service standards during those periods.”^{46/} These examples are situations that either are planned well in advance with the cooperation of the programmer (*e.g.*, a pay-per-view event) or are *exclusively* within the discretion of a cable operator (*e.g.*, maintenance). In other words, all of the examples constitute unilateral actions implemented by the cable operator, entirely unlike the situation faced by Altice.

Fourth, Starz falsely argues that Altice’s interpretation of “control” will “gut” the rule.^{47/} To the contrary, accepting Altice’s common-sense interpretation would best give meaning to the rule. Section 76.1603(b) contains two separate clauses identifying the timeframe in which notice should be given: “as soon as possible” and “30 days in advance” if the change is within the operator’s control.^{48/} Accepting the interpretation of the rule laid out by Altice would still require 30 days advance notice in the numerous situations where the operator has control. In most cases, channel repositioning, rate increases, and deletion of operator-owned or controlled channels are decisions made by the cable operator and the timing of those decisions is within the operator’s control.

But Altice’s interpretation also recognizes that providing notice of potential, rather than certain, programming changes is not required where the cable operator has no “control” over the deletion because it is engaged in good faith negotiation and reasonably believes an agreement will be reached. Altice was in negotiations with numerous programming networks as of December 1 and, with the exception of Starz, successfully negotiated new agreements for all of

^{46/} *Customer Service Order*, ¶ 43.

^{47/} Starz Response to Opposition, at 8.

^{48/} 47 CFR § 76.1603(b).

them.^{49/} Neither Starz nor any of these other programmers asked that Altice’s subscribers be provided with notice of a potential program deletion and Altice did not provide such notice.

The decision not to give notice was made for good reason: the Commission has recognized that such tentative notice can be wasteful, needlessly disruptive, and confusing for consumers.^{50/} Citing to the extreme rarity with which negotiations ultimately fail, the frequency of “false alarms,” the likelihood of customer confusion, and ample availability of content from other sources, both consumer groups and content providers themselves have also voiced serious concerns that premature notification regarding a potential loss of programming would, on balance, harm consumers and cause programmers to lose viewers prematurely.^{51/}

Finally, Starz claims that Altice’s interpretation of “control” is precluded by the *NFL Network* case,^{52/} but that case is inapposite:

^{49/} Schreiber Decl., ¶ 13.

^{50/} *Amendment of the Commission’s Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, 26 FCC Rcd 2718, ¶ 34 (2011) (“*2011 Retrans. NPRM*”) (“Adequate advance notice of retransmission consent disputes for consumers can enable them to prepare for disruptions in their video service. However, such notice can be unnecessarily costly and disruptive when it creates a false alarm, i.e., concern about disruption that does not come to pass, and induces subscribers to switch MVPD providers in anticipation of a service disruption that never takes place.”).

^{51/} See, e.g., *2011 Retrans. NPRM*, Comments of Sports Fan Coalition, at 4 (filed June 14, 2010) (“receiving notice of a pending dispute is not helpful absent certainty as to the outcome.”); *Id.*, Comments of Belo Corp. at 24 (filed May 27, 2011) (“In some instances, however, it is unnecessary for Belo to provide notice to viewers, even if an existing agreement is approaching expiration. . . . Belo will frequently extend carriage with an MVPD as long as the parties are engaged in productive negotiations. A requirement that would force Belo or MVPDs to provide notice in all instances 30 days out could confuse viewers and create additional disruption.”); *Id.*, Comments of Joint Broadcasters at 14-17 (filed May 27, 2011) (“The parties to the negotiation are in the best position to predict whether there is a chance that a station will not continue to be transmitted by a cable system as a result of an unsuccessful retransmission consent negotiation. The vast majority of negotiations are successfully resolved within 30 days of expiration of an existing agreement, such that requiring notice for any negotiation that is not resolved prior to the 30-day window would result in notices that are so frequent — and nearly always false alarms — that customers would discount them.”).

^{52/} Starz Response to Opposition, at 7.

- In *NFL Network*, Time Warner Cable had made a decision to drop the NFL Network that could have been communicated earlier to subscribers. In contrast, Altice gave notice the moment the decision was made.^{53/}
- In *NFL Network*, the Bureau found that Time Warner Cable had refused a 30-day extension offer from NFL Network that would have given Time Warner Cable the runway to provide its subscribers with 30-day notice. In contrast, Starz made no such offer to Altice, and in fact, only offered to extend “for a few days.”
- In *NFL Network*, Time Warner Cable could not assume that it would reach a carriage agreement with the programmer. Time Warner Cable had never successfully concluded an agreement with NFL Network and was not carrying NFL Network on most of its systems at the time of negotiations (it carried the network only on a few recently acquired systems pursuant to deals that the previous owner had negotiated). Therefore, while Time Warner Cable could not have reasonably assumed it would reach a carriage agreement with NFL Network as of the termination of its carriage agreements, here, Altice expected to reach an agreement with Starz. It had successfully negotiated agreements with Starz in the past, was actively making offers and participating in negotiations right up until expiration of the agreements on midnight of December 31, and on December 1, nothing about the negotiation stood out from negotiations with any of the other networks whose carriage agreements were expiring on December 31, all of which were successfully renewed.^{54/}

Moreover, to the extent that Starz seeks to apply the Bureau’s order in *NFL Network* more broadly – *i.e.*, by contending that the case requires that cable operators always notify subscribers of even a *potential* contract termination to avoid any possibility that customers lose access to desired content – the circumstances that led to that order have no bearing here, where Starz viewers have a variety of alternative methods of viewing Starz’s programming. Both before and after Starz’s carriage on Altice ceased, customers had immediate access to Starz content through multiple OTT platforms, as well as multiple video on demand platforms.^{55/}

^{53/} Schreiber Decl., ¶ 19.

^{54/} *Id.*, ¶¶ 5, 7, 13-14.

^{55/} Starz cites the deletion of its channels prior to the January 21, 2018 “premiere” episode of its “new” series, *Counterpart*, as its primary evidence of the harm that Altice’s alleged customer service violation has caused it. Emergency Petition, at 18-19. However, Starz not only made the “premiere” episode available to viewers online the day before it was available on the linear Starz network, but also had first presented that episode to viewers a month earlier. Press Release, Starz Entertainment LLC, Starz

Thus, the purpose of the customer notification rules – to ensure that subscribers can make a choice about where to access their desired content – was fulfilled.^{56/}

Starz downplays the value of the availability of its content by suggesting that Altice subscribers lack the knowledge or ability to access content on the Internet.^{57/} Altice, however, offers Internet service everywhere it offers cable service and estimates that about 70% of Altice subscribers subscribe to Netflix, Hulu, Amazon, or another OTT service. The Commission itself recently observed that “[t]he Internet has become a major part of consumers’ daily lives and now represents a widely used medium to obtain information.”^{58/} Notably, in closing the *NFL Network* proceeding without a decision on the merits of the NFL’s petition, the Bureau expressed that neither its initial order nor its order on reconsideration should be considered a final determination of the meaning of the requirements of the Commission’s customer service rules and orders.^{59/} That is particularly true 11 years later, when the ways that subscribers access and pay for content has changed fundamentally.

In short, none of Starz’s arguments for why Altice should be found to have had “control” over the decision to cease carriage of the Starz networks holds water.

Moreover, Starz’s manufactured consumer complaints are also irrelevant to this legal determination and should be disregarded. Starz’s purported showing of Altice customer outrage

Releases Key Art and New Series for Spy Thriller “Counterpart” (Nov. 30, 2017), <https://mediaroom.starz.com/news/starz-releases-key-art-and-new-series-video-for-spy-thriller-counterpart>.

^{56/} See Opposition to Emergency Petition, at 14.

^{57/} Starz Response to Opposition, at 11-12.

^{58/} *Electronic Delivery of MVPD Communications, Modernization of Media Regulation Initiative*, Notice of Proposed Rulemaking, 32 FCC Rcd 10755, ¶ 16 (rel. Dec. 14, 2017).

^{59/} *Time Warner Cable, A Division of Time Warner Entm’t Co., L.P.*, Order, 21 FCC Rcd 11229, 11233, n. 6 (2006) (“*NFL Network Consent Decree*”). Further, as discussed below, the Commission also tied its authority to enforce Section 76.1603(b) to a finding that Time Warner Cable’s termination of the NFL Network was part of a “systemic abuse” rather than an isolated incident, a fact not presented here.

at the decision to drop the Starz networks^{60/} is unsupported by the facts. Starz claims that there has been an “overwhelming flood of complaints from outraged Altice subscribers” and that it “has forwarded nearly 60,000 calls . . . inquiring about Altice’s deletion of the Starz Channels.”^{61/} The Commission has seen and rejected the value of these ginned up campaigns in prior carriage disputes. MASN tried a similar tactic in its dispute with Time Warner Cable over whether the network should be carried in North Carolina. As the Media Bureau observed in that proceeding, this type of one-sided and orchestrated campaign—which necessarily creates consumer confusion—is entitled to little or no weight: “[a]t most, these complaints may demonstrate that there are some . . . subscribers . . . that would like to view [the network at issue].”^{62/} In this case, the complaints that Starz cites are, at most, evidence that Starz has had some limited success with its social media campaign – including with individuals outside Altice’s footprint, and, in some cases, the country – premised on the misrepresentation that Altice has made an unreasonable decision to drop Starz programming.

B. The Notice Requirements Of Section 76.1603(c) Are Inapplicable Here.

Starz seeks to invoke the notice requirements of Section 76.1603(c) as an additional basis for its arguments, because it cannot demonstrate that even Altice’s alleged violation of Section 76.1603(b) was “systemic” and thus a matter properly within Commission, rather than local franchising authority, jurisdiction.^{63/} However, Section 76.1603(c) does not apply to this case.

^{60/} Starz Response to Opposition, at 12.

^{61/} *Id.*

^{62/} *CR Sports Broad Holding, LLP v. Time Warner Cable Inc.*, Memorandum Opinion & Order, 27 FCC Rcd 18099, ¶ 15 n.80 (2010) (discussing a complainant’s consumer campaign in a carriage proceeding, which the defendant MVPD noted relied on “. . . unverified complaints by people who clicked a button on a . . . sponsored website.”).

^{63/} *See infra* Part II.B.

As the Media Bureau acknowledged in the *NFL Network Reconsideration Order*,^{64/} while Section 76.1603(b) originated from the Commission's 1993 customer service rules, Section 76.1603(c) traces its origins to a provision adopted as part of the Commission's implementation of the 1992 Cable Act's rate regulation rules,^{65/} where it operated in tandem with Section 76.932, requiring 30 days' notice to subscribers of changes in basic service tier rates.^{66/}

In 1999, as part of its Biennial Regulatory Review, the Commission observed that Sections 76.309(c)(3)(i)(B), 76.964, and 76.932 were "duplicative."^{67/} Thus, the Commission elected to "reorganize" these provisions by relocating them into a new Section 76.1603. The Commission did not intend for this decision to make any substantive changes to the existing notice rules, but rather, merely to reduce the administrative burden on the cable industry.^{68/} As relocated, Section 76.309(c)(3)(i)(B), the generally applicable, franchising authority-enforced customer service rule, became Section 76.1603(b), while what had been the CPST rate regulation-specific rule, Section 76.964, became Section 76.1603(c) and the basic service tier rate regulation-specific rule, Section 76.932, became Section 76.1603(d). Because Section

^{64/} Section 76.1603(b) was originally designated as Section 76.309(c)(3)(i)(B). *Time Warner Cable, A Division of Time Warner Entertainment Company, L.P.*, Order on Reconsideration, 21 FCC Rcd 9016, ¶ 30 (2006) ("*NFL Network Reconsideration Order*").

^{65/} Section 76.1603(c) was originally designated as Section 76.964, which required thirty days' notice to local franchising authorities of changes in cable programming service tier ("CPST") rates. Over time, the Commission modified Section 76.964 to require that operators give advance notice of rate and service changes that directly or indirectly affected the price of the cable programming service tier and to specify that the required notice required inform subscribers of their right to bring cable programming service rate complaints.

^{66/} *NFL Network Reconsideration Order* ¶ 30.

^{67/} *1998 Biennial Regulatory Review -- Streamlining of Cable Television Services Part 76 Public File and Notice Requirements*, Report and Order, 14 FCC Rcd 4653, ¶ 11 (1999) ("*1999 Biennial Review*").

^{68/} *1999 Biennial Review*, ¶ 3. See also *id.*, NCTA Comments at 2 ("The proposed reorganization will assist cable operators, franchising authorities and others in locating the regulations. But it will not substantively alter any of the rules.").

76.1603(c) was an integral part of the Commission's CPST rate regulation scheme, it has no application to the instant dispute: CPST rate regulation ended in 1999.

Even if the Commission believes Section 76.1603(c) is still operative, it cannot be interpreted in a way that renders the limitations in Section 76.1603(b) superfluous by providing that service changes over which a cable operator has no control (and therefore do not violate Section 76.1603(b)) nonetheless form the basis for violations of Section 76.1603(c).^{69/} Indeed, Section 76.1603(c) requires a cable operator to provide subscribers 30 days' notice "before implementing" a rate or service change, implying that the operator must exercise a level of control comparable to the control condition in Section 76.1603(b).^{70/} Such an interpretation, which is consistent with both logic and the history of these provisions, avoids the unfair and anomalous result produced by an unduly narrow reading of Section 76.1603(c).^{71/}

C. Starz Has Failed To Demonstrate A Violation Of The Telephone Answering Standards.

Starz's assertion that telephone calls asking about the Starz networks' removal were diverted and not answered is wholly without merit.

^{69/} *Kungys v. United States*, 485 U.S. 759, 778 (1988) (plurality opinion of Scalia, J.); *South Carolina v. Catawaba Indian Tribe, Inc.*, 476 U.S. 498, 510 n. 22 (1986).

^{70/} In this regard, Section 76.1603(d), which applies only to rate changes, and not to service changes, is distinguishable from Sections 76.1603(b) and (c) because rate changes always are within the cable operator's control (and thus no "control" exception has ever been necessary for this provision or its predecessor).

^{71/} To the extent that the Media Bureau previously endorsed an interpretation of Section 76.1603(c) that conflicts with and nullifies the "control" condition in Section 76.1603(b), that ruling was made on an interim basis, did not reflect a final determination on the merits, and has never been considered or passed on by the full Commission. *See supra*, p. 18.

To begin, Starz has provided no supporting evidence for those allegations beyond an unsworn declaration stating only that Starz “understands” that customers had trouble reaching Altice^{72/} and pointing to complaints generated by Starz itself.^{73/}

The telephone answering rules do not require that every call be answered in the time frame dictated by the rules. They require only that 90 percent of the time, calculated annually, calls be answered within thirty seconds.^{74/} Starz makes no effort to provide evidence that would establish—or even suggest—a violation of this standard. Anecdotal assertions of a few dropped calls during a several week time-frame cannot adequately support a finding of violation. Altice undertook an extensive effort to ensure that its subscribers were well informed about the programming changes and the ways they could access Starz programming, and did not intentionally divert or disconnect any call.^{75/}

Moreover, the telephone answering rules apply only under “normal operating conditions,”^{76/} a standard that the Commission has described as encompassing conditions that either can be planned well in advance (*e.g.*, a scheduled pay-per-view event) or are *exclusively* within the discretion of a cable operator (*e.g.*, rate increases, system maintenance).^{77/} As described above, Starz undertook an extensive campaign designed to encourage as many people as possible to call Altice to complain, whether or not they were Altice subscribers, or even lived within Altice’s geographic footprint.^{78/} Starz executive producer Curtis Jackson (“50 Cent”) even

^{72/} Petition, at 7.

^{73/} Starz Response to Opposition, at 12-13.

^{74/} 47 CFR 76.309(c)(1)(ii). This flexibility was intended to allow for a “safety net” in instances of unexpected volume. *Customer Service Order*, ¶ 36.

^{75/} See Schreiber Decl., ¶¶ 19-21.

^{76/} 47 CFR 76.309(c)(1)(ii).

^{77/} *Id.*

^{78/} See Schreiber Decl., ¶ 22; see also Opposition to Emergency Petition, at Attachment A.

posted a video on social media threatening violence against Altice employees. Starz, having orchestrated a misleading social media and advertising campaign to drive up Altice's call volumes beyond "normal operating conditions," should not now be heard to complain that those efforts in some cases succeeded.

II. ALTICE'S CESSATION OF CARRIAGE OF THE STARZ NETWORKS ON JANUARY 1, 2018 DOES NOT WARRANT THE ENFORCEMENT ORDER OR FURTHER RELIEF REQUESTED BY STARZ

A. Starz Has No Standing To Seek Relief Under The Customer Service Rules.

Starz's standing to bring a complaint that Altice violated its customer service obligations hinges on Starz's ability to show that Starz falls within the "zone of interests" sought to be protected by the customer service standards.^{79/} But Congress' purpose in directing the Commission (in Section 632 of the Act) to promulgate subscriber notice and other customer service rules was not to provide relief to cable programmers or other third parties. Rather, as the Commission highlighted when it proposed rules implementing Congress' mandate, the customer service rules are intended to address communications between cable operators and their subscribers, "rather than to specify the substantive answer to a variety of billing and service controversies."^{80/} As a result, Starz lacks standing to seek relief for the alleged violations of the Commission's customer service standards it identifies in its Petition. For this reason alone, the Commission should terminate this matter without taking the actions requested by Starz.

^{79/} See, e.g., *Sierra Club v. Morton*, 405 U.S. 727 (1972); *Association of Data Processing Service Organizations v. Camp*, 397 U.S. 150 (1970).

^{80/} *Implementation of Section 8 of the Cable Television Consumer Protection and Competition Act of 1992; Consumer Protection and Customer Service*, 7 FCC Rcd 8641, ¶ 16 (1992) ("Customer Service NPRM"). See also *Customer Service Order*, ¶ 4 (describing the purpose of the customer service rules as "to ensure that cable operators nationwide provide satisfactory service to their customers.").

B. Complaints Alleging Violations Of The Customer Service Rules Are Properly Brought Before Local Franchising Authorities, Not The Commission.

Congress intended, and the Commission has confirmed, that complaints alleging violations of the customer service rules are properly brought before local franchising authorities, not the Commission. Section 632(a)(i) of the Act states that “[a] franchising authority may establish and enforce customer service requirements of the cable operator,” and Section 76.309 and Section 76.1603 of the Commission’s rules implementing that provision both begin with the statement that “[a] cable franchise authority may enforce the customer service standards set forth in ... this section against cable operators. The franchising authority must provide 90 days’ written notice of its intent to enforce standards.”^{81/} There is nothing in these provisions suggesting that Starz, even if it has standing to seek enforcement of the customer service rules, is exempt from the general rule that such enforcement complaints are to be heard by local franchising authorities, not the Commission.^{82/}

The Commission’s discussion of its rules implementing Section 632 confirm that it understood that franchising authorities, not the Commission, would be the proper forum to receive and evaluate customer service complaints, stating that “the standards that we adopt today should be enforced by local franchising authorities” and that the rules “establish[ed] baseline customer service standards on which *local governments* may rely to ensure that the cable systems they regulate provide an adequate level of customer service to cable subscribers.”^{83/} Consistent

^{81/} 47 U.S.C. 552(a); 47 C.F.R. §76.309(a); 76.1603(a).

^{82/} Moreover, the Commission’s rules establish no procedure by which a complaint could be filed at the Commission. In this regard, it is significant that 47 C.F.R. § 76.7(a)(2) provides that “complaints shall conform to the relevant rule section under which the complaint is being filed.” There is no relevant rule section in Part 76 setting forth procedures for customer service complaints because the Commission does not entertain them.

^{83/} *Customer Service Order*, ¶ 10 (emphasis added). See also *id.*, ¶ 19 (“Section 632(b), in delineating the FCC’s involvement in establishing customer service standards, provides this Commission

with its position, the Commission has declined to adopt federal enforcement standards so as to avoid preempting the authority of local regulators in this area.^{84/}

While the Commission did reserve the right “to address, as necessary, systemic abuses [of the customer service rules] that undermine the statutory objectives,”^{85/} it would stretch the concept of a “systemic” abuse to the breaking point to apply it here.^{86/} Starz has not alleged, nor could it, that Altice repeatedly and willfully ignored its obligations under the customer service rules. In fact, Starz concedes that Altice gave 30 days’ notice prior to dropping a pair of channels whose certain unavailability was known to Altice on or before December 1, 2017. With regard to the telephone answering rules, Starz not only has failed to establish that the alleged failure on the part of Altice to meet the telephone answering standards occurred at all, let alone during “normal operating conditions” (as explained above), it also has failed to show that the problems with telephone communications that it claims occurred were frequent or experienced by Altice systems other than ones that Starz itself targeted with its social media and advertising campaign.

Further, Altice has not acted in a way that undermines the statutory objectives of the customer service rules. Those objectives are to facilitate communications between cable

with no specific enforcement role. As a result, it does not appear that Congress intended for the Commission bear the responsibility of enforcing the new FCC standards’); *id.*, ¶ 3 (“These standards will become effective on a nationwide basis on July 1, 1993. They will then be enforced by local franchise authorities.”).

^{84/} *Id.*, ¶ 21 (“[A]doption of Federal enforcement standards could preempt local enforcement mechanisms and hamper effective local enforcement of customer service requirements.”).

^{85/} *Id.*

^{86/} See, e.g., *Customer Service Order*, ¶ 19; *Complaint Against Comcast Corporation for Systemic Abuse of Customer Service Standards Established by the Federal Communications Commission Pursuant to Section 632(b) of the Communications Act of 1934, as Amended*, Memorandum Opinion and Order, 19 FCC Rcd 702, ¶¶ 1, 8 (2004) (“*Comcast/WOW Dismissal Order*”); *NFL Network Reconsideration Order*, ¶ 31. It appears that the reservation of authority regarding systemic abuses was for purposes only of additional rulemaking, not adjudication. See *Customer Service Order*, ¶ 69.

operators and their subscribers, and to ensure that cable operators provide satisfactory service to their customers.^{87/} Here, Altice sought at every step to further those objectives. It avoided the confusion to its customers that would have been occasioned by receipt of a notice about potential channel deletions that, a month prior to December 31, seemed unlikely to occur (and, in every instance save one, did not occur). When the deletion of the Starz networks became certain and unavoidable (*i.e.*, “as soon as possible”), Altice reached out to its customers through a variety of platforms with information about the service changes, replacement services, options for customers to obtain continued access to Starz content, and the availability of credits and refunds.^{88/} A failure to provide more frequent notices to cover contingencies does not undermine the statutory objectives of Section 8.^{89/} Thus, the Commission has no record basis for finding that Starz’s complaint falls within the narrow “systemic abuses” exception to the “historical pattern” of relying on local franchising authorities, not the Commission, to enforce the customer service standards.^{90/}

C. An “Enforcement Order” Directing Altice To Reinstate Carriage Of The Starz Networks Would Serve No Valid Purpose, Would Be Confusing To Consumers, And Would Be Harmful To Altice And The Programmers It Added As Replacements To The Starz Networks.

Even if the Commission concludes that it is an appropriate forum for addressing Starz’s customer service complaints, it would nonetheless be inappropriate for the Commission to issue the particular “enforcement order” sought by Starz. That order, if issued, would mandate that Altice restore the Starz networks to the channels on which they were carried prior to January 1,

^{87/} See *supra*, Part II.A.

^{88/} Schreiber Decl., ¶¶ 19-21.

^{89/} *Comcast/WOW Dismissal Order*, ¶¶ 9-10; *2011 Retrans. NPRM*, ¶ 34.

^{90/} *Customer Service NPRM*, ¶ 4 (emphasis added).

2018 for a period of 30 days. Such an order would be *ultra vires* and would harm the same consumers the consumer protection rules are intended to benefit.

There is nothing in the Communications Act or the Commission's rules that gives it the authority to order mandatory carriage of a cable programming network as a remedy for a violation of the customer service rules. To the contrary, Section 624(f)(1) of the Act expressly prohibits both the Commission and local franchising authorities from "impos[ing] requirements regarding the provision or content of cable services, except as expressly provided in this title."^{91/} Other portions of Section 624 drive home the point that the cable operators generally cannot be told what programming to carry on their systems absent an express grant of authority to do so.^{92/} Given that there are several examples of Congress conferring authority on federal or local regulators to mandate carriage of particular types of programming under particular circumstances, the fact that no such authority was given in connection with the customer service rules becomes even more significant.^{93/}

Altice's customers have known about and had the opportunity to respond to the removal of the Starz networks for more than 30 days. The fact that customers have had more than 30 days to adapt to the revised channel line-ups is reason enough not to order the reinstatement of the Starz networks. Putting the channels back on, just to take them off again, is almost certain to cause confusion and unhappiness, especially among those customers who already have requested refunds or credits, or have followed Altice's advice by seeking out alternative sources of Starz content. Customer call centers would be flooded with inquiries, and customers would not

^{91/} 47 U.S.C. 544(f)(1).

^{92/} See, e.g., 47 U.S.C. 544(a) and (b)(1).

^{93/} Examples of statutory provisions under which a cable operator can be forced by regulatory intervention to carry a channel include the must carry rules (including the now-repealed "sweeps" rule), the public and leased access rules, and the program carriage rules. Any reference to mandated carriage as recourse for a customer service violation is notably missing from the statute or the Commission's rules.

understand the necessity or point of having to experience multiple channel line-up disruptions. Having to go through the process of explaining to its customers the on-again, off-again status of the Starz networks, and of the channels added as replacements for the Starz channels, would both adversely impact Altice's goodwill and impose an unnecessary and costly burden on Altice. It would also have an adverse financial impact on the replacement channels and adversely affect their goodwill.^{94/}

The argument against ordering mandatory carriage as a remedy for an alleged telephone availability rule violation is even more compelling. There is no logical connection between Altice's alleged failure to timely respond to customer calls and an order mandating carriage of the Starz networks for 30 days.

The lack of any tailoring of a remedy that intrudes on a cable operator's editorial discretion to match the harm from the alleged violation would raise substantial First Amendment issues.^{95/} It is the Commission's responsibility to avoid such issues.^{96/}

^{94/} Notwithstanding Starz's assertion to the contrary, the fact that Altice assigned the replacement channels to different channels than those previously occupied by the Starz networks does not demonstrate that Altice has available capacity to carry both the Starz channels and the replacement channels simultaneously. *See* Schreiber Decl., ¶¶ 17-18.

^{95/} The only instance in which the Commission has ordered temporary carriage in response to a subscriber notice violation arose where such carriage was ordered only three days after the alleged violation occurred (in response to a complaint filed the very day the operator deleted the channels). The situation is much different in this case, where Starz waited over a week to file its initial Petition and another 10 days before claiming it needed "emergency" relief and where consumers have now been on notice for more than 30 days with respect to the service changes and the options available to them for continuing to access the Starz content or receiving other relief from Altice.

^{96/} *Public Citizen v. United States Department of Justice*, 91 U.S. 440, 455 (1989); *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988).

D. This Is An Appropriate Case For The Commission To Exercise Its Discretion Not To Impose Any Liability On Altice For Alleged Violations Of The Customer Service Rules.

This is not the first time a cable operator has been accused of violating the subscriber notice rules (although it appears to be the first time the Commission has been asked to adjudicate a complaint alleging a violation of the telephone availability rules.). Where such complaints have arisen, the Commission has made clear that it has broad discretion over whether or not to commence an enforcement action or otherwise seek to impose liability on a cable operator based on the alleged violation.^{97/} In this case, the imposition of a forfeiture or other penalty on Altice would be particularly inappropriate. As demonstrated above, Altice did not engage in the kind of willful and repeated behavior that would constitute a systemic abuse of the Commission's rules nor did it act in a way that undermined the statutory objectives of those rules. Instead, Altice went to great lengths to ensure its customers' interests were protected, even in the face of Starz's intentional attempts to disrupt Altice's communications with its customers. For these reasons and those described in Altice's Opposition to the Emergency Petition, there was no harm to consumers and no harm to Starz that would justify imposing a forfeiture in this case.

^{97/} See, e.g., *ACC Licensee, Inc. v. Shentel Telecomm. Co.*, Memorandum Opinion and Order, 27 FCC Rcd 7584, ¶ 18 (2012) (declining to address alleged notice violations citing Commission's enforcement discretion); *Nexstar B'casting, Inc. v. Time Warner Cable Inc. and Bright House Networks, LLC; Emergency Petition for Injunction and Sanctions*, Letter, 29 FCC Rcd 11155, 11156 (2014). See also 2011 Retrans. NPRM, ¶ 35, n.105.

CONCLUSION

For the reasons discussed herein, the Commission should deny the Petition.

Respectfully submitted,

/s/ Tara M. Corvo

Tara M. Corvo
Seth A. Davidson
Ari Z. Moskowitz
Elana R. Safner
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

Jay Cohen
George W. Kroup
Paul, Weiss, Rifkind, Wharton &
Garrison LLP
1285 Avenue of the Americas
New York, New York 10019
(212) 373-3000

February 5, 2018

Attachment A

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Altice USA, Inc.)	
Cablevision Systems Corporation, and)	
CSC Holdings, LLC)	
)	MB Docket No. 18-9
Petition for Declaratory Ruling,)	
Enforcement Order, and Further Relief)	

DECLARATION OF MICHAEL SCHREIBER

I, Michael Schreiber state, upon knowledge, information and belief, that:

1. I am the Executive Vice President, Chief Content Officer, Altice USA, Inc. (“Altice”) and submit this declaration in support of the “Opposition of Altice, USA, Inc. to the Petition for Declaratory Ruling, Enforcement Order, and Further Relief of Starz Entertainment, LLC.”
2. Prior to January 1, 2018, Altice carried Starz networks pursuant to agreements that were entered into on December 20, 2012 and December 29, 2012, each with a scheduled expiration date of December 31, 2017.
3. In March 2017, at an in-person meeting, Altice recommended to Starz that, to get an early start on a new or extended agreement, Starz should submit a proposal to Altice. Despite in-person meetings in Altice’s New York City offices on May 24, 2017 and July 11, 2017, at which it would have been customary for a programmer to make carriage proposals to Altice, Starz did not offer its first proposal until September 20, 2017.

4. Altice expressed immediate concern about various aspects of Starz's September 20 proposal, and remained in contact with Starz about the proposal over the next two months, including a November 8 telephone call in which Altice provided Starz with detailed feedback.

5. Altice expected to reach an agreement with Starz. It had successfully negotiated agreements with Starz in the past – and numerous similar premium networks and over-the-top (“OTT” or “direct to consumer”) partners – and had no reason to think that it would not do so again.

6. Assuming that its relationship with Starz would continue beyond December 31, 2017, Altice expanded Starz's existing carriage in November 2017 by adding Starz to Altice's new Optimum Premier Package – Altice would not have taken this step if it had already decided to cease carrying Starz at the end of December.

7. Altice presented a formal counter-proposal to Starz on November 28, to which Starz did not respond until December 4. When Starz responded on December 4, it rejected Altice's counter-proposal, and presented a new proposal for Altice's consideration. Negotiations continued over the next three and a half weeks, accelerating as the December 31, 2017 deadline approached. During this period, the parties met repeatedly by phone and in-person, exchanging and discussing more than a dozen different carriage proposals.

8. The parties' core disagreements were about the value of the Starz programming and whether it was acceptable to force Altice customers to subsidize its cost even if they did not want or watch the product. In considering Starz's proposals, Altice weighed the fact that customers who were most interested in the Starz networks can purchase such content directly from Starz.

9. With these concerns in mind, Altice presented a variety of proposals, including an offer to carry the Starz networks on a solely *a la carte* basis, an offer to extend either of the existing Cablevision or Suddenlink agreements, and an offer to resell Starz’s direct-to-consumer service to Altice’s customers. In each proposal, Altice sought to find common ground with Starz—in some cases, by agreeing to Starz’s proposed payment structure, in others, by moving closer to Starz’s desired pricing, and in still others, by changing the duration of the deal. Starz rejected every one of these proposals.

10. During these December discussions, Starz raised the possibility of a short-term extension, under which Altice would continue to carry the Starz networks for a few days past December 31, to “get past the holidays.” Altice responded that it would do so, but would pay fees retroactively to January 1 only once a longer-term agreement was reached. While Starz has characterized this as a demand for “free carriage,” Altice’s motivation was to ensure that the parties continued to work towards a multi-year carriage agreement. Starz rejected this approach, offering only to extend the agreements for a few days on the expiring agreements’ terms – an offer that Altice believed was unlikely to incentivize the parties to reach a long-term agreement.

11. At no point during these discussions did Starz propose any extension of 30 days or longer based on the expiring agreements. Altice was the only party that made such an offer, suggesting repeatedly that the parties enter into a one-year or two-year extension on the terms of the expiring agreements. Starz rejected this offer.

12. Altice explicitly advised Starz that if an agreement could not be reached by the time the existing agreements expired, Altice, having no legal right to carry the Starz networks, would remove them from its cable systems’ line-ups. Altice offered to resell Starz’s OTT product to help Altice’s subscribers’ transition to the OTT product in the event carriage was

discontinued. Altice subscribers are highly familiar with OTT offerings – Altice estimates that about 70% of them subscribe to Netflix, Hulu, Amazon, or other OTT offerings – making Starz’s OTT product a viable alternative for the vast majority of viewers. Starz declined this offer, too.

13. During the entire time Altice and Starz were engaged in negotiations, Starz never suggested that Altice should begin notifying its customers in advance of the possible deletion of the Starz networks. Altice did not give notice of the potential deletion of any of the more than 30 content providers with whom it had carriage agreements expiring on December 31, because it reasonably expected that those agreements would be renewed. Renewal agreements were reached with every single such content provider except Starz. Altice did give subscribers notice of several programming changes that it knew with certainty were being implemented.

14. On Sunday, December 31, 2017, the parties held two in-person meetings, one in the morning and one in the afternoon. Ultimately, the parties could not agree on terms and Starz made no extension offer. The second meeting ended with the parties shaking hands and agreeing that both sides had tried to reach a deal. Starz thanked Altice for its “professionalism” during the negotiating process. At midnight, with no agreement or extension in hand and no new communications taking place between the parties, Altice’s management concluded that with no legal basis for continuing to carry the Starz networks, it had to remove them from Altice’s systems and so instructed its operations team.

15. Altice and Starz have continued negotiations since December 31, 2017 in an effort to strike a new carriage deal.

16. After Altice removed the Starz networks from its systems, some subscribers began receiving HBO or Showtime at a discount, and others began receiving TMC at no additional charge for 12 months. (The exact menu of replacement service varied by system and

programming package). It added various other networks to its channel line-ups in the exercise of good faith business judgment to create a programming line-up that reflects the best value for Altice's customers. Altice had negotiated contingency carriage agreements with several of these channels in case negotiations with Starz fell through, a common practice in contentious carriage negotiations. Those networks include Hallmark Drama Channel, MGM HD Channel, The Sony Movie Channel and others, and expanded distribution of FLIX.

17. Given that different channels require different amounts of bandwidth, taking advantage of cable channel mapping capability, Altice assigned these replacement service channel numbers that are different than the channels the Starz channels had occupied.

18. Altice systems are extremely bandwidth constrained. The addition of these new channels has fully occupied any available capacity. As a result, if Altice were ordered to reinstate carriage of the Starz networks, it would be forced to make difficult choices among (i) deleting channels to avoid breaching launch obligations scheduled in 2018; (ii) down-converting one of its newly launched channels currently carried in HD to SD; (iii) canceling the highly-anticipated launch of a 4K channel that would be distributing 4K content for the 2018 Winter Olympics (scheduled for this week); and/or (iv) deleting thousands of Video-On-Demand (VOD) assets (including all of its VOD assets for the 2018 Winter Olympics), to the extent Altice needs to restore Starz VOD content.

19. Immediately prior to the removal of the Starz network feeds from Altice's systems and the addition of the substitute channels (*i.e.*, at 12:00 AM on January 1, 2018), Altice began notifying its customers of the changes in their channel line-ups. Altice posted an on-screen message on channels previously occupied by Starz informing customers that the programming would no longer be available on Altice's channel line-ups and advising customers

to visit a dedicated website page (optimum.net/starz) for additional information. The website and notices offered information about the changes in the channel line-ups, and also notified customers that “[i]f you wish to continue to watch Starz and StarzEncore, you can purchase it directly through Starz at www.starz.com or via their Android/IOS app” and that Hulu (available to many Altice customers directly via their HD cable boxes) also offers past seasons of many Starz shows.

20. In addition to the onscreen slate and dedicated website, Altice sent targeted (by programming package) email blasts to its customers and included information about the service change in customers’ next billing statement. It also provided its customer service representatives with detailed scripts and talking points for responding to consumer inquiries about the service change and activated IVR messaging capability to provide recorded information to callers and help direct their calls.

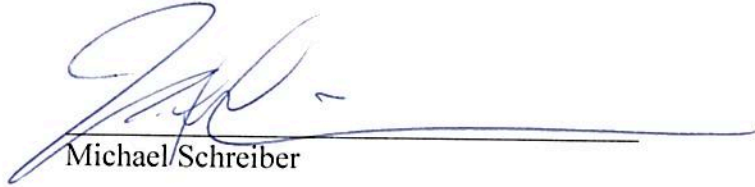
21. Through these communications or in response to subscriber inquiries, Altice informed customers that if they elected to downgrade or disconnect service within 30 days, they would not be charged any downgrade or disconnect fee, and that if they had pre-paid their services, they would be entitled to a refund if they chose to disconnect. Subscribers who were billed for Starz *a la carte* for the month of January were informed that they would receive a bill credit on the next month’s billing statement.

22. Once the Starz channels were removed from the Altice systems, Starz launched an intense campaign asking customers to call Altice and complain, whether or not they were Altice subscribers, or even lived within Altice’s geographic footprint. Starz launched a new website – *keepstarz.com* – and ran ads in the *New York Times* and on the front page of the *New York Post*. Starz ran numerous television ads, including during the NFL playoffs, and began a celebrity-

heavy global social media campaign that reached at least twenty million Instagram followers and over ten million Twitter followers all over the world.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and information.

Dated February 5, 2018

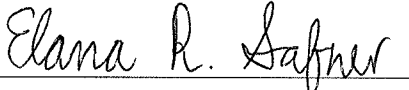
A handwritten signature in blue ink, appearing to be 'M. Schreiber', is written over a horizontal line. The signature is stylized with a large initial 'M' and a cursive 'S'.

Michael Schreiber

CERTIFICATE OF SERVICE

I, Elana R. Safner, hereby certify that on this 5th day of February, 2018, copies of the foregoing Opposition of Altice USA, Inc. to the Petition for Declaratory Ruling, Enforcement Order, and Further Relief of Starz Entertainment, LLC were served by first-class U.S. mail, postage prepaid, upon:

Robert L. Hoegle, Esquire
Thomas F. Bardo, Esquire
Nelson Mullins Riley & Scarborough LLP
101 Constitution Avenue, NW, 9th Floor
Washington, DC 20001



Elana R. Safner